



# PUBLIC NOTICE

Federal Communications Commission  
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DA 02-602

## SMITH BAGLEY, INC. PETITIONS TO REDEFINE THE SERVICE AREA OF CENTURY TEL OF THE SOUTHWEST, INC. IN THE STATE OF NEW MEXICO

CC Docket No. 96-45

Release Date: March 13, 2002

Comment Date: April 4, 2002

Reply Comment Date: April 15, 2002

The Common Carrier Bureau provides notice that Smith Bagley, Inc. (Smith Bagley) has filed a petition, pursuant to section 54.207 of the Commission's rules,<sup>1</sup> requesting the Commission's consent to the New Mexico Public Regulation Commission's (New Mexico Commission) proposed "service area"<sup>2</sup> definition for areas served by Century Tel of the Southwest, Inc. (Century Tel) within New Mexico.<sup>3</sup> The New Mexico Commission proposes to define Smith Bagley's service area as an area different from the study area<sup>4</sup> of Century Tel for the purpose of determining federal universal service obligations and support mechanisms.<sup>5</sup>

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<sup>1</sup> 47 C.F.R. § 54.207.

<sup>2</sup> Section 214(e)(5) defines the term "service area" as a geographic area established by a State commission or the Federal Communications Commission for the purpose of determining universal service obligations and support mechanisms. For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company." 47 U.S.C. § 214(e)(5).

<sup>3</sup> *Petition of Smith Bagley, Inc. to redefine Local Exchange Carrier Service Area Definitions of Century Tel of the Southwest, Inc. Within the State of New Mexico*, CC Docket No. 96-45, filed by Smith Bagley on March 1, 2002 (Smith Bagley Petition). See also Letter from David A. LaFuria, Counsel for Smith Bagley, to William F. Caton, FCC, dated March 8, 2002.

<sup>4</sup> Generally, a study area corresponds to an incumbent local exchange carrier's entire service territory within a state. See 47 C.F.R. § 54.207(b).

<sup>5</sup> See *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Final Order, Utility Case No. 3026 (NM Com. Feb. 19, 2002) (New Mexico Order) (adopting the Recommended Decision of the Hearing Examiner and Certification of Stipulation). See also *Smith Bagley, Inc. for Designation*

Specifically, the New Mexico Commission proposes to modify Smith Bagley's service area to include the Zuni, Ramah, and Fence Lake wire centers and Smith Bagley's existing service contour within the Pine Hill, Vanderwagn, Gallup, and Grants wire centers.<sup>6</sup> The New Mexico Commission recommended that Century Tel's noncontiguous Pecos exchange be delineated as its own service area and that the exchanges served by Smith Bagley be grouped together as a second separate service area.

If the Commission does not act on the petition within 90 days of the release of this Public Notice, the definition proposed by the New Mexico Commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>7</sup>

The Petition: On February 19, 2002, the New Mexico Commission issued an order designating Smith Bagley as an eligible telecommunications carrier (ETC), under section 214(e) of the Communications Act of 1934, as amended (the Act), to receive federal universal service support for service provided in areas of New Mexico.<sup>8</sup> In so doing, the New Mexico Commission concluded that it was in the public interest to designate Smith Bagley as an ETC in the study area of Century Tel, a rural telephone company.<sup>9</sup>

The New Mexico Commission conditioned Smith Bagley's ETC designation upon confirmation of its proposed service area designation by this Commission.<sup>10</sup> In compliance with the request of the New Mexico Commission, Smith Bagley has filed a petition with the Commission seeking approval of the proposed modified service area definition.<sup>11</sup>

Commission Rules: For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."<sup>12</sup> Section 54.207 of the Commission's rules<sup>13</sup> and the *Universal Service Order*<sup>14</sup> set

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*as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Recommended Decision of the Hearing Examiner and Certification of Stipulation, Utility Case No. 3026 (Aug. 14, 2001) (New Mexico Recommended Decision).

<sup>6</sup> New Mexico Recommended Decision at 13-14; Smith Bagley Petition at 6, Exh. B – Map of the proposed service area.

<sup>7</sup> See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>8</sup> See New Mexico Order.

<sup>9</sup> New Mexico Recommended Decision at 17.

<sup>10</sup> New Mexico Recommended Decision at 22.

<sup>11</sup> See generally Smith Bagley Petition.

<sup>12</sup> See 47 U.S.C. § 214(e)(5).

<sup>13</sup> 47 C.F.R. § 54.207.

forth the procedures for consideration of petitions seeking to designate service areas for rural telephone companies that are different from such companies' study areas.<sup>15</sup>

Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice.<sup>16</sup> If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5).<sup>17</sup> If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>18</sup> Under section 54.207(e) of the Commission's rules, the Commission delegates its authority under section 54.207(c) to the Chief of the Common Carrier Bureau.<sup>19</sup>

An original and four copies of all comments must be filed with William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., TW-B204, Washington D.C. 20554. In addition, four copies of each comment must be delivered to Sheryl Todd, Common Carrier Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-A520, Washington, D.C., 20554, and one copy to Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington D.C., 20554. In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, hand-delivered or messenger-delivered filings must be delivered to **236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002.**<sup>20</sup> The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

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<sup>14</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881, para. 188 (1997) (*Universal Service Order*) (subseq. history omitted).

<sup>15</sup> 47 C.F.R. § 54.207(c)(1)(i), (ii). Specifically, section 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

<sup>16</sup> 47 C.F.R. § 54.207(c)(3). The rules require the Commission to issue a Public Notice of any petition to define a service area served by a rural telephone company to be other than such company's study area. 47 C.F.R. § 54.207(c)(2).

<sup>17</sup> See 47 C.F.R. § 54.207(c)(3)(i).

<sup>18</sup> See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>19</sup> 47 C.F.R. § 54.207(e).

<sup>20</sup> See *FCC Announces New Filing Location for Paper Documents*, Public Notice, DA 01-2919 (rel. December 14, 2001).

Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

<b>If you are sending this type of document or using this delivery method...</b>	<b>It should be addressed for delivery to...</b>
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 a.m. to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 <sup>th</sup> Street, SW Washington, DC 20554

In addition to filing paper comments, parties **are encouraged also to file comments electronically** using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Document in Rulemaking Proceedings, 63 Fed Reg. 24, 121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by the Internet e-mail. To receive instructions, send an email to [ecfs@fcc.gov](mailto:ecfs@fcc.gov) and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Richard D. Smith or Anita Cheng, Accounting Policy Division, Common Carrier Bureau at (202) 418-7400, TTY (202) 418-0484.